

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

BODYGUARD PRODUCTIONS,
INC., ET AL.,

Plaintiffs,

v.

RCN TELECOM SERVICES OF
MASSACHUSETTS, LLC and RCN
TELECOM SERVICES, LLC,

Defendants.

Civil Action No. 3:21-cv-15310-FLW-
TJB

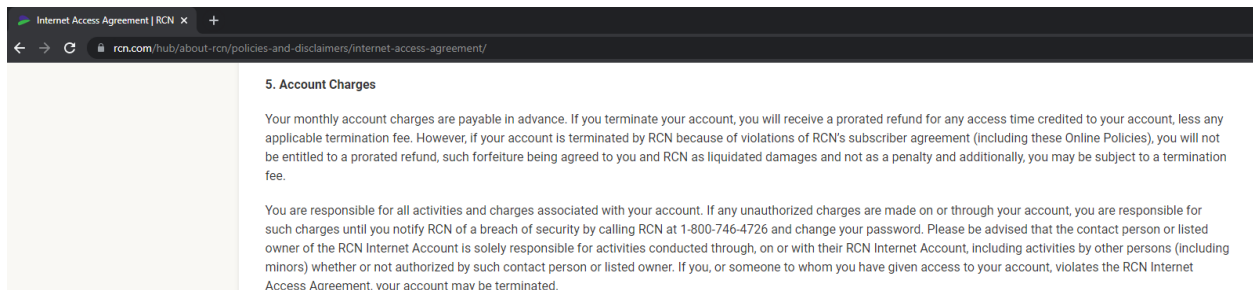
**DECLARATION OF KERRY
CULPEPPER**

DECLARATION OF KERRY S. CULPEPPER

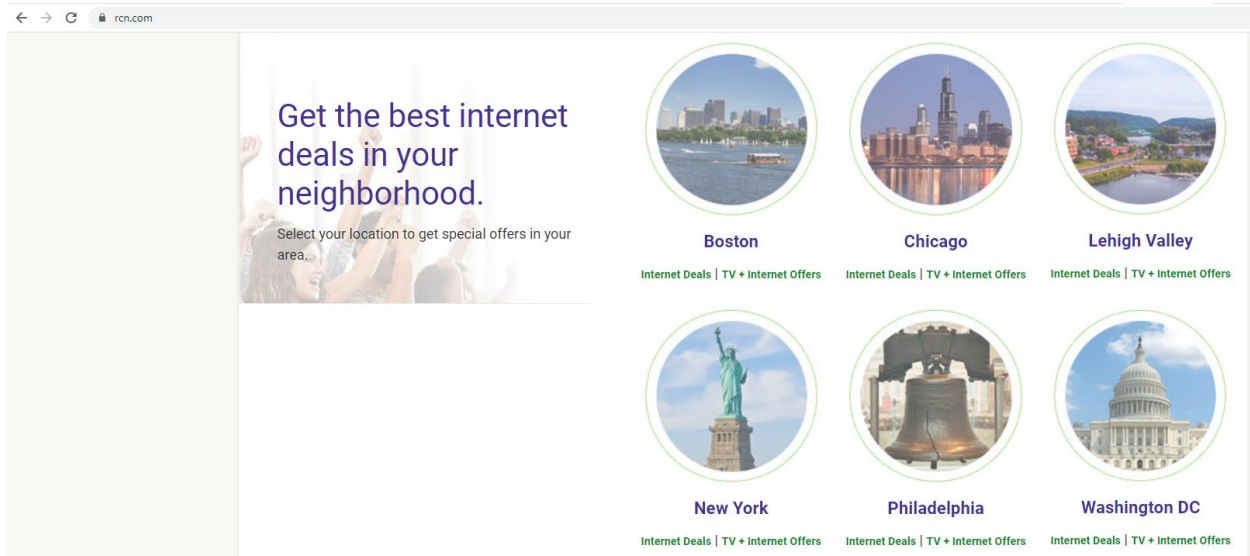
KERRY S. CULPEPPER, hereby declares under penalty of law that the following is true and correct.

1. I am an attorney and represent the Plaintiffs, I have personal knowledge of the matters stated herein.

2. Below is a true and accurate partial screenshot of how the website <https://www.rcn.com/hub/about-rcn/policies-and-disclaimers/internet-access-agreement/> appeared on Dec. 8, 2021.



3. Below is a true and accurate partial screenshot of how the website <https://www.rcn.com> appeared on Dec. 8, 2021.



4. Exhibit “A” is a true and accurate copy of a Declaration of Daniel Arheidt in the *Venice* case I obtained from Pacer that was filed in response to the Show Cause Order Defendant cites in its Motion to Dismiss.

5. Exhibit “B” is a true and accurate copy of a response filed in *Venice* I obtained from Pacer.

6. Exhibit “C” is a true and accurate copy of a minute order (with highlight added) the Court issued in *Venice* after the Plaintiff filed a motion to resume the cases I obtained from Pacer.

7. Defendants assert that “Until now, Plaintiffs’ *modus operandi* is to file John Doe lawsuits in the hope of securing quick settlements and to dismiss at the slightest resistance.” Memo. [Doc. #28-1] at pg. 2. As discussed below, this is incorrect.

8. I represented some of the Plaintiffs in this action in civil actions in the Districts of Hawaii and Eastern District of Virginia against anonymous operators (“John Does”) of notorious

piracy websites such as YTS and YIFY (1:19-cv-169-LEK, D. Haw), MKVCAGE.COM (1:19-cv-487-JMS, D. Haw) and piracy applications such as Popcorn Time (1:21-cv-282-RDA-TCB, E.D. Va) and ShowBox (1:18-cv-192-LEK, D. Haw).

9. In the YTS lawsuit, the operators of the YTS and YIFY websites agreed to an injunction ordering them to cease infringing and contributing to Plaintiffs' Works. The operator of the YTS website provided records of its registered accounts in the US. As shown by Exhibit "C" to the FAC [Doc. #22-3], at least one of Defendants' subscribers had a registered account with the YTS website.

10. In the ShowBox lawsuit, operators of websites distributing ShowBox agreed to stipulated injunctions ordering them to stop distributing ShowBox and display warnings to their users on their websites. (1:18-cv-192-LEK-RT, D. Haw, Doc. #78).

11. In the Popcorn Time lawsuit, the magistrate judge recently issued a Report and Recommendation recommending that the Court grant a default judgment against the John Doe that operates Popcorn Time, and the companies Wicked Technology Limited and VPN.HT Limited that provided infrastructure for Popcorn Time agreed to a stipulated injunction. *See* 1:21-cv-00282-RDA-TCB, E.D. Va, Doc. #60 (Stipulated Permanent Injunction in which VPN operator to use best efforts to implement technological measures designed to prevent subscribers from using the BitTorrent protocol) and Doc #64 (Report and Recommendation).

12. The MKVCage case was administratively suspended pending the decision of the Ninth Circuit Court of Appeals in *42 Ventures, LLC v. Vinit Mav, et. al.*, 20-17305.

13. Defendants attempt to cast doubt on the validity of Exhibit "C" of the FAC by stating, "It is concerning that Plaintiffs have submitted this very same "Certificate of Authenticity"

from Mr. Segaran in other recent litigations...RCN is unaware of any credible record of website activity that looks like this...” on pgs. 5-6 of their Motion.

14. Mr. Segaran provided this evidence from the YTS website in connection with the YTS lawsuit (1:19-cv-169-LEK, D. Haw.) This evidence from the YTS website provided by Mr. Segaran has been used in other cases such as *FALLEN PRODUCTIONS, INC., et al. v. STEPHEN MOODY, et al.*, 1:20-cv-2842-MSK-MEH, D. Colo. (Doc. #40-2), *FALLEN PRODUCTIONS, INC., v. KELTON WADE SHRIVER et al.*, 1:20-cv-3170-PAB, D. Colo. (Doc. #11-3) D. Colo., *FALLEN PRODUCTIONS, INC., et al. v. MICAL MESOT*, 1:20-cv-33-JAO-RT, D. Haw. (Doc. #28-4) and demonstrated to be accurate. For example, in the above cases, Defendants provided declarations admitting to being a YTS user and downloading the Works just as stated in the evidence. I have included a true and accurate copy of the Mr. Moody’s declaration as Exhibit “D” as an example.

15. This evidence from the YTS website has proven so accurate that it has even provided identification of users that used Virtual Private Network (“VPN”) services to conceal their piracy. *See, e.g., MILLENNIUM FUNDING, INC. et al. v. PRIVATE INTERNET ACCESS, INC., et al.*, 1:21-cv-1261-RM-SKC (Docs. ##59-10 through 59-20) (Various YTS users admit to using a VPN to access the YTS website to download copyright protected movies).

16. I represent some of the Plaintiffs in civil actions in the Districts of Colorado, Southern District of Florida and Eastern District of Virginia against VPN providers and host providers. In some cases, host providers and VPN providers have agreed to block notorious piracy websites such as YTS. *See e.g., MILLENNIUM FUNDING, INC. et al. v. PRIVATE INTERNET ACCESS, INC., et al.*, 1:21-cv-1261-RM-SKC, D. Col., Doc. #46 (Host provider Sharktech agrees

to block piracy websites); 1:21-cv-00282-RDA-TCB, E.D. Va, Doc. #60 (Stipulated Permanent Injunction ordering VPN operator to use best efforts to implement technological measures designed to prevent subscribers from using the BitTorrent protocol).

17. One of the lawsuits denigrated by Defendants as “John Doe lawsuits in the hope of securing quick settlements” against the VPN provider LiquidVPN was cited by the Director of Innovation Policy, Kristian Sout, of the International Center for Law & Economics in comment to Executive Order 13984 to identify LiquidVPN as an example of an anonymous service frequently implicated in the piracy of copyrighted materials by criminal rings. *See* Kristian Stout, “Comments on the Advanced Notice Of Proposed Rulemaking, Re: Executive Order 13984, “Taking Additional Steps To Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities””, International Center for Law & Economics, Oct. 25, 2021 (Excerpt attached as Exhibit “D”).

In some cases, service providers have explicitly designed their services to provide anonymity for users as a way to defeat ISP compliance with copyright law. For instance, LiquidVPN was sued earlier this year for designing and marketing its services as a “no-log” VPN. LiquidVPN promoted its service as enabling use of peer-to-peer networks and pirate-streaming websites with impunity, because the company would be unable to comply with any ISP or rightsholder demands to unmask users.

18. I represented some of the Plaintiffs in this action in civil actions in the Districts of Colorado (1:21-cv-1901-DDD-MEH) and Western District of Texas (1:21-cv-00709-RP) against the Internet service providers Wide Open West and Grande, respectively. Opposing counsel in this case also represents the Defendants in the Colorado and Western District of Texas actions. I am informed that Grande, Wide Open West and RCN are controlled by the same entity.

<https://www.rcn.com/hub/about-rcn/newsroom/astound-broadband-completes-acquisition-of-wow/> [last accessed on Nov. 25, 2021].

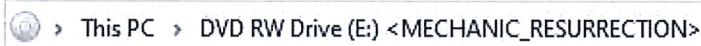
19. Defendants refer to “heavy redactions” in Exhibit “C” on pg. 6 of their Motion. The unredacted version of Exhibit “C” is over 25 pages and includes the email addresses and IP addresses of 215 YTS user registered accounts that downloaded the torrent file for pirating *Rambo V: Last Blood*, many of which that do not appear to be Defendants’ subscribers based upon the IP addresses. Because the unredacted version includes these email addresses, I told Defendants’ counsel in connection with the Colorado case that I would give him the unredacted version of the YTS records after we agreed to a protective order.

20. During our Rule 26(f) scheduling conference in the Colorado action, I proposed the parties agrees to a stipulation for a court order to give Defendant authorization to disclose the subscriber identifications of Defendant’s subscribers at the IP addresses where infringements occurred. Defendant’s counsel refused to agree to a stipulation for a court order and filed a motion opposing disclosure. *See e.g.*, 1:21-cv-1901-DDD-MEH, DEFENDANT’S RESPONSE TO PLAINTIFFS’ MOTION FOR ORDER AUTHORIZING DISCLOSURE OF DEFENDANT’S SUBSCRIBERS’ IDENTITIES AND ORDERING DEFENDANT TO BEGIN NOTIFICATION PROCESS [Doc. #48]. I understand that Defendants’ counsel intends to take same approach for this case.

21. Exhibit “E” is a true and accurate copy of the Order Granting Motion to Reconsider and Default Judgment in *Hunter Killer Productions, Inc., et al. v. Sabrina Boylan*, 3:20-cv-00306-FM, Doc. #20 (W.D. Tx 2021) (“*Boylan*”). I represented the Plaintiffs in *Boylan*.


22. The type of website blocking orders requested by Plaintiffs is common in other English-speaking countries. *See* Malovic, Nedim, The Evolution of Copyright Website Blocking In the UK: Live Blocking Orders (December 1, 2018). E.I.P.R. 2018, 40(12), 810-814, Available at SSRN: <https://ssrn.com/abstract=3348426> or <http://dx.doi.org/10.2139/ssrn.3348426> https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3348426 [all last accessed on Nov. 24, 2021] (discussing history of UK website blocking orders); https://cassels.com/rep_work/federal-court-of-appeal-confirms-availability-of-site-blocking-orders-in-canadian-copyright-cases/ [last accessed on Nov. 24, 2021] (Canadian Court orders blocking of piracy websites); <https://www.zdnet.com/article/australias-anti-piracy-laws-used-to-block-proxy-websites-for-the-first-time/> [last accessed on Nov. 24, 2021] (Australian Court orders blocking of torrent proxy websites).

23. On Dec. 21, 2021, I loaded a legitimate Blu-Ray copy of *Mechanic: Resurrection* on my computer to determine the file name. Below is a true and accurate partial screenshot as it appeared on my computer on Dec. 21, 2021 showing the file name to be “MECHANIC_RESURRECTION”.



I declare under the penalty of perjury that the foregoing is true and correct.

DATED: Kailua-Kona, Hawaii, December 21, 2021.



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Attorney for Plaintiffs

A handwritten signature in blue ink, appearing to read "K. Culpepper", is located in the lower right quadrant of the page.